

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.L.P.No. 97 of 2007()

CC.665/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
, KAYAMKULAM
.....

PETITIONER/COMPLAINANT:

SUJATHA, D/O.BHARGAVI,
VALLIYIL THEKKATHI, THEKKU KOCHU MURI,
KRISHNAPURAM VILLAGE.

BY ADVS. SRI.R.REJI
SMT.C.A.AJITHA SALAM

RESPONDENTS: STATE AND ACCUSED

1. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. ANANDARAJ,
S/O.KUNJUPILLA, PROPRIETOR, GENERAL TRADERS,
N.K.V.BHAVAN, CHERAVALLY MURI,
KAYAMKULAM VILLAGE.

BY PUBLIC PROSECUTOR SRI. P.RAVINDRA BABU.

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 97 OF 2007

Dated this the 8th day of March, 2007

O R D E R

This is an application for special leave to appeal against the judgment in C.C. No.665 of 2005 on the file of the Judicial First Class Magistrate's Court, Kayamkulam.

2. The above case was taken on file on the basis of a complaint filed by the petitioner alleging that the second respondent committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”). The case of the complainant was that the second respondent borrowed an amount of Rs.1,00,000/- from her and issued Ext.P1 cheque towards discharge of the said liability and that the cheque in question when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the second respondent. Thereafter, the petitioner sent notice to the second respondent. According to the second respondent, the notice was not served on him. The petitioner has a case that the notice was received by the father-in-law

of the second respondent. To prove the case against the second respondent, the complainant and three other witnesses were examined as PWs.1 to 4 and Exts.P1 to P6 were produced. On closing the evidence of the complainant, the second respondent was questioned under Section 313 Cr.P.C. The only contention raised by the second respondent was that he was not served with the notice of dishonour of the cheque in question and hence he cannot be said to have committed the offence alleged against him. After considering the entire evidence, the trial court found that the petitioner - complainant failed to prove that the second respondent committed offence punishable under Section 138 of the Act and hence acquitted him.

3. Learned counsel appearing for the petitioner submits that the fact that the father-in-law of the second respondent received the notice itself is sufficient to prove that notice was “served” on the second respondent and hence the order of acquittal passed by the court below is irregular and illegal. Learned counsel relied on the judgment of this Court reported in **Sheela M.v. Gopalakrishnan V. & Another, 2005(2) K.L.J. 487** wherein this Court had taken the view that serving of notice to one of the major members of the family of the addressee is enough. In that case, the court found that the contents of the notice was conveyed to the addressee by the

person who received the notice on behalf of the accused as authorised by him. In the present case, even though the father-in-law of the accused received the notice, the second respondent was not informed of either receipt of notice or the contents of the notice. The father-in-law of the second respondent when examined as PW.3 stated before the court below that immediately on receipt of notice, he left for Bangalore without informing the second respondent regarding receipt of the notice or the contents of the same. In the above circumstances, this Court is of the view that the findings entered by the court below require no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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